

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|-------------------------|---|-------------------|
| CYNTHIA ANNE DIVEGLIA, | : | CIVIL ACTION |
| | : | |
| Plaintiff, | : | |
| | : | NO. 1: CV-00-1342 |
| v. | : | |
| | : | |
| NORTHWESTERN MUTUAL | : | |
| LIFE INSURANCE COMPANY, | : | |
| | : | |
| Defendant. | : | (Judge McClure) |
| | : | |

**DEFENDANT’S BRIEF IN SUPPORT OF
MOTION FOR LEAVE TO FILE REPLY BRIEF**

I. INTRODUCTION

On or about May 17, 2004, both the plaintiff and the defendant filed motions in limine. At the time Defendant filed its motion, it did not have the testimony of Plaintiff’s expert, Dr. Borgan. Dr. Borgan’s trial testimony was taken on May 27, 2004.

Northwestern did not receive this testimony until Plaintiff filed it as an exhibit on June 8, 2004. Although Dr. Borgan’s testimony was not available when Northwestern filed its motion in limine, Plaintiff relied on the transcript to support her arguments in favor of admissibility.

Northwestern moves for leave to file a reply brief because Northwestern wishes to address various issues raised in Plaintiff’s Brief in

Opposition to Defendant's Motion in Limine. The most important issue is the reliability of Dr. Borgen's trial expert testimony, an issue that could not be addressed fully until Dr. Borgen was deposed.

II. ARGUMENT

A. Defendant's Request For Leave To File A Reply Brief Should be Granted Because Dr. Borgen's Trial Testimony Was Not Available to Defendant at the Time it Filed Its Motion In Limine.

As noted above, when Defendant filed its Motion in Limine on May 17, 2004, it did not have a copy of Dr. Borgen's trial testimony to incorporate into its Motion. As the Court will recall, Defendant was forced to file a motion to compel this deposition which is why it was not completed earlier in the case.

In fact, although the deposition of Dr. Borgen was taken on May 27, 2004, Defendant did not obtain a copy of the trial testimony until Plaintiff filed its Memorandum in Opposition to Defendant's Motion on June 8, 2004. Defendant wishes to address the issues raised by Plaintiff in its Memorandum in Opposition and to address portions of Dr. Borgen's opinion testimony because, in Defendant's view, it cannot withstand the Daubert challenge.

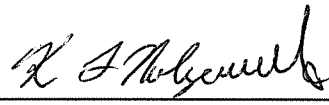
III. CONCLUSION

Based upon the above, the Defendant respectfully requests that this Court grant its Motion for Leave to File A Reply Brief so that Defendant can

address issues raised in Plaintiff's Memorandum in Opposition and to have the Court rule on its Daubert challenge to Dr. Borgen's trial testimony.

Respectfully submitted,

STEVENS & LEE

By: _____


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Counsel for Defendant Northwestern Mutual
Life Insurance Company

CERTIFICATION OF COUNSEL

I, KIRK L. WOLGEMUTH, certify that this matter was discussed with Plaintiff's counsel, Archie Diveglia, Esquire and that he does not concur in this Motion.

Dated: Sept 16, 2004



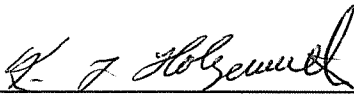
Kirk L. Wolgemuth

CERTIFICATE OF SERVICE

I, KIRK L. WOLGEMUTH, ESQUIRE, certify that on this date I served a true and correct copy of the foregoing Motion upon the following counsel of record by U.S. Mail:

Archie V. Diveglia, Esquire
Two Lincoln Way West
New Oxford, PA 17350

Dated: June 16, 2004



Kirk L Wolgemuth